

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTHONY BROOKS,
Plaintiff,
v.
JACQUELINE BRYANT,
Defendant.

3:19-cv-00457-APG-CLB

REPORT AND RECOMMENDATION **OF U.S. MAGISTRATE JUDGE¹**

Before the court is Plaintiff Anthony Brooks's ("Brooks"), application to proceed *in forma pauperis* (ECF No. 10), his amended *pro se* civil rights complaint (ECF No. 12), his motion for extension and forms (ECF No. 3), motion for mediation/arbitration (ECF No. 4), motion for subpoena (ECF No. 7), and motion to extend time (ECF No. 8). For the reasons stated below, the court recommends that Brooks's *in forma pauperis* application (ECF No. 10) be granted, that his amended complaint (ECF No. 12) be dismissed with prejudice, and that his motion for extension and forms, motion for mediation/arbitration, motion for subpoena, and motion to extend time (ECF Nos. 3, 4, 7, 8) be denied as moot in light of this Report and Recommendation.

I. IN FORMA PAUPERIS APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled

¹ This Report and Recommendation is made to the Honorable Andrew P. Gordon, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 to redress.” 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000)
 2 (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

3 The Local Rules of Practice for the District of Nevada provide: “Any person who is
 4 unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP].
 5 The application must be made on the form provided by the court and must include a financial
 6 affidavit disclosing the applicant’s income, assets, expenses, and liabilities.” LSR 1-1.

7 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with some
 8 particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir.
 9 1981) (quotation marks and citation omitted). A litigant need not “be absolutely destitute to
 10 enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331,
 11 339 (1948).

12 A review of the application to proceed IFP reveals Brooks cannot pay the filing fee;
 13 therefore, the court recommends that the application be granted.

14 **II. SCREENING STANDARD**

15 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
 16 provides, in relevant part, that “the court shall dismiss the case at any time if the court
 17 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim
 18 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is
 19 immune from such relief.” 28 U.S.C. § 1915A(b). A complaint is frivolous when “it lacks an
 20 arguable basis in either law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). This
 21 includes claims based on legal conclusions that are untenable (e.g., claims against
 22 defendants who are immune from suit or claims of infringement of a legal interest which
 23 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 24 delusional scenarios). *Id.* at 327–28; see also *McKeever v. Block*, 932 F.2d 795, 798 (9th
 25 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
 26 standard applied in the context of a motion to dismiss under Federal Rule of Civil Procedure
 27 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which requires dismissal

1 where the complaint fails to “state a claim for relief that is plausible on its face,” *Bell Atl.*
 2 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

3 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
 4 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
 5 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that
 6 the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679
 7 (2009). The complaint need not contain detailed factual allegations, but must offer more
 8 than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief
 9 above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is taken in reviewing
 10 the pleadings of a *pro se* party, for a more forgiving standard applies to litigants not
 11 represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal
 12 construction may not be used to supply an essential element of the claim not initially pled.
 13 *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a *pro se*
 14 plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless
 15 it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103,
 16 1107 (9th Cir. 1995).

17 III. SCREENING OF FIRST AMENDED COMPLAINT²

18 In his complaint, Brooks sues Defendant Jacqueline Bryant, Clerk of Court for
 19 Washoe County Courts under 42 U.S.C. § 1983 and seeks injunctive relief and monetary
 20 damages. (See ECF No. 12). Brooks alleges that Bryant abused her office as Clerk of
 21 Court by refusing to file motions, advising him a case was a federal case and that he should
 22 file the document in federal court although Brooks did not have a federal case, and printing
 23 false docket sheets. (*Id.* at 3-4.) Brooks asserts that “Bryant’s involvement with the Free
 24 Mason organization has filled her with hate and bias” against him. (*Id.* at 4.)

25
 26 ² The court finds the First Amended Complaint (ECF No. 12) to be the operative
 27 complaint in this case, which it now screens.

1 Section 1915(d) accords judges the authority to dismiss a claim based on an
 2 indisputably meritless legal theory, for example, a claim in which it is clear that the defendant
 3 is immune from suit. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). “Court clerks have
 4 absolute quasi-judicial immunity from damages for civil rights violations when they perform
 5 tasks that are an integral part of the judicial process.” *Mullis v. United States Bankruptcy*
 6 *Court*, 828 F.2d 1385, 1390 (9th Cir. 1987), cert. denied, 486 U.S. 1040 (1988). The same
 7 immunity will also bar declaratory and injunctive relief. *Id.* at 1394. “The commencement of
 8 an action by filing a complaint or petition is a basic and integral part of the judicial process.”
 9 *Id.* at 1390. Therefore, even if the allegations in the complaint are accepted as true, the clerk
 10 is absolutely immune from suit unless his actions were performed in the clear absence of all
 11 jurisdiction. *Id.* A mistake or an act in excess of jurisdiction does not abrogate judicial
 12 immunity, even if it results in “grave procedural errors.” *Stump v. Sparkman*, 435 U.S. 349,
 13 359 (1978).

14 Even if all of these allegations are taken as true, they all properly are characterized
 15 as integral parts of the judicial process. Consequently, Bryant qualifies for quasi-judicial
 16 immunity unless these acts were done in the clear absence of all jurisdiction. As noted
 17 above, a mistake or an act in excess of jurisdiction does not abrogate judicial immunity, even
 18 if it results in “grave procedural errors.” *Stump*, 435 U.S. at 359. Here, the complaint alleges
 19 that Bryant erred in failing to carry out her alleged duties. Thus, Bryant had quasi-judicial
 20 immunity and did not act in the clear absence of all jurisdiction. The court, therefore,
 21 recommends that the complaint be dismissed with prejudice, as amendment would be futile.
 22 See *Cato*, 70 F.3d at 1106.

23 Because the court recommends that the complaint be dismissed with prejudice, the
 24 court recommends that Brooks’s other pending motions (ECF Nos. 3, 4, 7, 8) be denied as
 25 moot.

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1 **IV. CONCLUSION**

2 For the reasons articulated above, the court recommends Brooks's application to
 3 proceed *in forma pauperis* (ECF No. 10) be granted, Brooks's amended complaint (ECF No.
 4 12) be dismissed with prejudice, and his motion for extension and forms, motion for
 5 mediation/arbitration, motion for subpoena, and motion to extend time (ECF Nos. 3, 4, 7, 8)
 6 be denied as moot in light of this Report and Recommendation.

7 The parties are advised:

8 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 9 Practice, the parties may file specific written objections to this Report and Recommendation
 10 within fourteen days of receipt. These objections should be entitled "Objections to
 11 Magistrate Judge's Report and Recommendation" and should be accompanied by points
 12 and authorities for consideration by the District Court.

13 2. This Report and Recommendation is not an appealable order and any notice
 14 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
 15 Court's judgment.

16 **V. RECOMMENDATION**

17 **IT IS THEREFORE RECOMMENDED** that Brooks's application to proceed *in forma*
 18 *pauperis* (ECF No. 10) be **GRANTED**;

19 **IT IS FURTHER RECOMMENDED** that Brooks's first amended complaint (ECF No.
 20 12) be **DISMISSED WITH PREJUDICE**; and

21 **IT IS FURTHER RECOMMENDED** that Brooks's motion for extension and forms,
 22 motion for mediation/arbitration, motion for subpoena, and motion to extend time (ECF Nos.
 23 3, 4, 7, 8) be **DENIED** as moot in light of this Report and Recommendation.

24 **DATED:** February 4, 2020.

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 27 **UNITED STATES MAGISTRATE JUDGE**